

AO 241 (Rev. 09/17)

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District:	
Name (under which you were convicted): <u>Dustin M. Marques</u>		Docket or Case No.:	
Place of Confinement : <u>North Eastern Correctional Center</u>		Prisoner No.: <u>W113681</u>	
Petitioner (include the name under which you were convicted) <u>Dustin Marques</u>		Respondent (authorized person having custody of petitioner) <u>Sheila Kelly</u> <u>Commonwealth of Massachusetts</u> <u>Lyons House</u> (Northeastern Correctional Center)	
The Attorney General of the State of: <u>Massachusetts</u>			

PETITION

RECEIVED IN CLERK'S OFFICE  
DATE 4-11-22

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Fall River Superior Court

Fall River, Ma

- (b) Criminal docket or case number (if you know): 1973CR00061

2. (a) Date of the judgment of conviction (if you know): 12/11/2019

- (b) Date of sentencing: 12/11/2019

3. Length of sentence: 4 years to 4 years and 1 day

4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case:

Trafficking Heroin 18-36 grams  
Assault and Battery

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)  
☐ (2) Guilty ☐ (4) Insanity plea

AO 241 (Rev. 09/17)

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Massachusetts Court of Appeals

(b) Docket or case number (if you know): 2020-P-0844

(c) Result: Affirmed

(d) Date of result (if you know): June 7, 2021

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: the commonwealth did not present sufficient evidence for the Jury to find beyond a reasonable Doubt that the substances found were intended for distribution, rather than for personal use. Prosecutorial misconduct in closing argument for misrepresenting the burden of proof of trafficking. the motion Judge erred in denying motion to suppress, the Commonwealth failed to meet the burden of proof required in a motion to suppress hearing

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Supreme Judicial Court Massachusetts

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Result: further review denied

Application for further review denied. No hearing.

AO 241 (Rev. 09/17)

(4) Date of result (if you know): \_\_\_\_\_

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: the appeals court improperly denied  
appeal(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☐ Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: \_\_\_\_\_

AO 241 (Rev. 09/17)

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

---

---

---

---

---

---

---

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

---

---

---

---

---

---

---

---

---

---

AO 241 (Rev. 09/17)

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☐ No(2) Second petition: ☐ Yes ☐ No(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

**GROUND ONE:** The Commonwealth did not present sufficient evidence for the jury to find beyond a reasonable doubt that Mr. Marques intended to distribute the heroin, rather than personal use.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): All of the evidence presented by the Commonwealth that could point to distribution, also equally points to personal use. No evidence was presented that points to distribution only. There was evidence that points solely to personal use. All evidence presented was material witness evidence. There was no physical evidence, besides the actual drugs (Heroin) that were confiscated. 28.13 grams of Heroin, which is consistent with a one week supply according to the Commonwealth's expert.

(b) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

AO 241 (Rev. 09/17)

## (c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: ~~Direct Appeal to Appellate court~~Name and location of the court where the motion or petition was filed: ~~Massachusetts court~~~~of Appeals~~Docket or case number (if you know): ~~2020-P-0844~~Date of the court's decision: ~~June 7, 2021~~

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☒ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes ☒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: ~~Massachusetts Supreme Judicial Court~~

Docket or case number (if you know):

Date of the court's decision: ~~The court did not review the appeal~~

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

~~My application for further review was denied~~

AO 241 (Rev. 09/17)

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Application to SJC for further Appellate

review was denied at application

**GROUND TWO:** Prosecutorial Misconduct during closing argument

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

the prosecutor stated in closing arguments "Specifically, 18 grams is the statutory amount to prove trafficking. This isn't close, he's got 28. He's not doing 28 grams of heroin a week and living." This implied to the jury that all they needed to convict me of trafficking was that I possessed over 18 grams, not that they also needed to find that I had an intent to distribute. The only evidence the commonwealth had physically was the heroin, so it is not fair that the prosecutor stated in closing that He had met his burden of proving trafficking when in fact, he did not meet the burden. I admitted in my testimony that it was my weekly supply, which the expert testimony corroborated.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?



Yes



No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes

☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

AO 241 (Rev. 09/17)

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Direct appeal to SSC was denied at application

**GROUND THREE:** The motion Judge erred in denying my motion to suppress evidence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): No exigent circumstances v. the Commonwealth did not meet their burden of Justifying entry into my home. The police entered using a key provided to them by Ashley Lydon, who did not have legal authority to provide consent, and also did not have apparent authority to consent. She was at the police station when the police demanded that she give them her key and stressed the urgency that they arrest me immediately. They did not make any further inquiry to determine if Mr. Lydon had any authority over the premises of the search. She was coerced to give the key.



AO 241 (Rev. 09/17)

(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(c) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?



Yes

☐ No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes

No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

AO 241 (Rev. 09/17)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

---

---

---

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

---

---

---

**GROUND FOUR:**

---

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

---

---

---

---

---

---

---

---

(b) If you did not exhaust your state remedies on Ground Four, explain why:

---

---

---

---

---

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

---

---

---

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

---

AO 241 (Rev. 09/17)

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_

AO 241 (Rev. 09/17)

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

---



---



---

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

---



---



---

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

---



---



---



---



---



---



---



---

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

---



---



---



---



---

AO 241 (Rev. 09/17)

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Daniel Rich 250 E. Main St  
Norton, Ma

(b) At arraignment and plea: Daniel Rich 250 E. Main St  
Norton, Ma

(c) At trial: Daniel Rich 250 E. Main St  
Norton, Ma

(d) At sentencing: Daniel Rich 250 E. Main St  
Norton, Ma

(e) On appeal: Matthew Harper-Nixon  
P.O. BOX 320336 West Roxbury, MA 02132

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☒ Yes ☐ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: fall River Superior Court  
2 years probation on Assault and Battery on and  
After current four year sentence

(b) Give the date the other sentence was imposed: 12/10/2021

(c) Give the length of the other sentence: 2 years probation

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☒ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

The Judge sentenced me to time served on the  
Assault and Battery, then two weeks later  
She brought me into court to revoke the  
one year sentence and sentenced me to  
2 years probation. Once time is served  
I will argue that the Judge cannot revoke  
now served sentence and sentence must be probation.

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

AO 241 (Rev. 09/17)

- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.


Therefore, petitioner asks that the Court grant the following relief: reverse decision by the appellate court to Affirm the trial Courts decision to deny my motion to suppress  
Reverse the decision of the appellate court to uphold the conviction of trafficking class A  
or any other relief to which petitioner may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 4/1/2022 (month, date, year).

Executed (signed) on

4-1-2022 du  
12/8/2021 (date).

  
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.